

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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**TOWN OF WINDHAM**

**Petitioner**

**and**

**WINDHAM SUPPORT STAFF, AFSCME  
COUNCIL 93, LOCAL 1801**

**Respondent**

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**CASE NO. A-0566-8**

**DECISION NO. 2000-073**

**PRE-HEARING CONFERENCE MEMORANDUM AND ORDER**

**BACKGROUND**

The Town of Windham (Complainant) filed an unfair labor practice (ULP) charge on June 15, 2000 pursuant to RSA 273-A:5 II (f) alleging that the Windham Support Staff, AFSCME Council 93, Local 1801 (Respondent), acting through its agents have breached the Collective Bargaining Agreement (CBA) between the parties by attempting to grieve an issue to arbitration that is non-arbitrable, its rationale being that the Town's decision was based upon the application of "external law" to the appointment process which is not subject to the CBA. The issue involves the failure of the Town to appoint a non-resident to the position of Deputy Town Clerk alleging that she does not meet the requirement of residency. The Complainant initially sought relief from the PELRB in the form of temporary and permanent cease and desist orders, a finding that the issue is non-arbitrable under the parties' CBA, and a finding that the Respondent has committed an unfair labor practice. The passage of time and the effective date of new legislation affecting the appointment has now resulted in the Town making the aforementioned appointment, albeit belatedly in the eyes of the Association. The Complainant also seeks an award of costs for having to file its complaint with the PELRB.

The Respondent answers that the Complainant Town's interpretation of the law was erroneous and has filed a motion for declaratory judgement in the Rockingham Superior Court. It now wishes to proceed to arbitration to seek an order regarding the timeliness of the Town's appointment of its member to the position of Deputy Town Clerk and back pay

for its member. It requests that the PELRB dismiss the Town's ULP and order the parties to arbitration.

The parties are in discussions and are desirous of resolving the declaratory judgement action first as is may be dispositive of the matter now before the PELRB.

**PARTICIPATING REPRESENTATIVES**

For the Complainant: Jennifer Shea Moeckle, Esquire  
For the Respondent: Jennifer Springer, Esquire


**DECISION AND PRE-HEARING ORDER**

A Pre-Hearing Conference was conducted before the undersigned Hearings Officer on July 26, 2000. Following discussions between the parties' representatives and discussions before the Hearings officer the parties have mutually stipulated, and the PELRB hereby orders as follows:

1. The parties waive an evidentiary hearing in this matter and agree that the PELRB may make its decision upon the submission of Memoranda of Law and an Agreed Statement of Facts, to be jointly executed. These documents shall be later submitted to the Board as indicated below.
2. The Respondent shall refrain from all further attempts to pursue arbitration of this matter prior to a decision by the Rockingham Superior Court in a related declaratory action presently pending before it as Docket # 00-E-0267.
3. The instant matter pending before the PELRB shall be held in abeyance for a period of ninety (90) days at which time it shall be administratively dismissed, without prejudice and as agreed by the parties unless either party makes a prior request of the PELRB, in writing, for it to call for the submission of the Agreed Statement of Facts and Memoranda of Law by the parties and for it to make its decision thereon.
4. The Agreed Statement of Facts and respective Memoranda of Law referenced above shall be submitted to the PELRB on or before October 24, 2000 or as may be otherwise earlier ordered by the PELRB upon the request of either party.

So ordered.

Signed this 27<sup>th</sup> day of July, 2000

  
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Donald E. Mitchell, Esq.  
Hearings Officer